

**United States Department of Labor
Employees' Compensation Appeals Board**

W.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 07-611
Issued: May 23, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2006 appellant filed a timely appeal from the January 25 and November 17, 2006 merit decisions of the Office of Workers' Compensation Programs which denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional injury in the performance of duty.

FACTUAL HISTORY

On December 6, 2005 appellant, then a 53-year-old mail handler (detailed as an acting manager), filed a claim alleging that his stress headaches were a result of his federal employment. He stopped work that day and sought medical attention. The history appellant provided was that he was off work since June, "returned yesterday and received news of change in job (location, hours, duties), became very upset, headache, similar to before stroke." Appellant felt the change in job was vindictive.

Dr. Pauline A. Clansy, a licensed clinical psychologist, reported that appellant was under her care for depression subsequent to referral from his primary care physician on December 7, 2006. She recommended a leave of absence effective December 8, 2005 due to stress and anxiety-related issues.

A postal inspector interviewed appellant on January 10, 2006. Appellant stated that he suffered a stroke in May 2005. Other than a few days in June 2005 he was off work until December 5, 2005. The following day appellant was given a letter stating that he would be returned to a mail handler position at the employing establishment's main facility in Houston, Texas. He stated that he did not want to return as a mail handler and did not want to work a shift starting at 7:00 p.m. The postal inspector noted: "[Appellant] did not provide any further explanation other than being informed that he was to return to his original job duties to explain how his headache was work related and caused within one day of return to work."

In a decision dated January 25, 2006, the Office denied appellant's claim for compensation. The Office found that the change from appellant's detail position to the position of mail handler was not a compensable factor of employment.

At an August 31, 2006 hearing before an Office hearing representative, appellant testified how he returned to work for a low-stress or less-stress environment and how he was then given a letter demoting him back to the position of mail handler, requiring him to report to work downtown at 7:00 p.m. Saturday. Appellant filed a grievance that was still pending. He explained that he filed a claim for workers' compensation because he was at work, on the clock and being paid. Appellant stated that it was totally unfair, after all his years of service, to be handled that way.

In a decision dated November 17, 2006, the hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found that objecting to the manner in which the employing establishment carried out administrative functions was not compensable and there was no evidence of error or abuse by the employing establishment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

¹ 5 U.S.C. §§ 8101-8193.

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Workers' compensation, however, does not cover each and every injury or illness that is somehow related to employment.³ An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,⁴ neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;⁵ investigations;⁶ determinations concerning promotions and the work environment;⁷ discussions about an SF-171;⁸ reassignment and subsequent denial of requests for transfer;⁹ discussion about the employee's relationship with other supervisors;¹⁰ or the monitoring of work by a supervisor.¹¹

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.¹² Perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.¹³

ANALYSIS

Appellant attributes his emotional condition to the reassignment he received on December 6, 2005. As he testified, he was at work, was on the clock and he was being paid, but not everything that happens to an employee at work is covered by workers' compensation. As a general rule, appellant's reaction to the reassignment is not a compensable factor of his employment. Coverage may be afforded when the evidence of record establishes error or abuse by the employing establishment in the implicated administrative or personnel matter. The record here makes no such showing. Appellant has his beliefs as to the motives of his superiors and he clearly feels that they did not treat him fairly, but his claim for compensation benefits may not rest solely on his perceptions. He must submit reliable, convincing evidence of error or abuse.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁵ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁶ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁷ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁸ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁹ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁰ *Raul Campbell*, 45 ECAB 869 (1994).

¹¹ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹² *Margreate Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Appellant testified that he was currently pursuing a grievance. However, grievances or Equal Employment Opportunity complaints by themselves do not establish workplace harassment or unfair treatment.¹⁴ As appellant testified, the grievance remains pending. With no proof of error or abuse by management in its treatment of appellant on or about December 6, 2005, he has failed to establish that his claim falls within the exception to the general rule that reactions to administrative or personnel matters are not compensable. The Board will affirm the denial of appellant's claim for benefits. Appellant has not demonstrated error in the decision to assign him to work as a mail handler.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 17 and January 25, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 23, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).